



April 6, 2007

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## ENGROSSED HOUSE BILL No. 1349

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DIGEST OF HB 1349 (Updated April 4, 2007 12:35 pm - DI 104)

**Citations Affected:** IC 25-24; IC 35-48.

**Synopsis:** Legend drug prescriptions by optometrists. Specifies that the practice of optometry does not include surgery or intravitreal injection into the eye. Allows optometrists who are certified by the optometric board to administer, dispense, and prescribe codeine with certain compounds and hydrocodone with certain compounds under specified circumstances. Requires an optometrist to examine the patient before prescribing or dispensing certain drugs and to refer the patient to a physician if the patient's pain does not improve after 48 hours. Adds an optometrist to the controlled substances advisory committee and specifies that an affirmative vote of a majority of the advisory committee members is necessary to take action. Repeals a law concerning drug formulary requirements. Makes conforming changes.

**Effective:** July 1, 2007.

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### Welch, Frizzell, Reske, Hoy

(SENATE SPONSORS — MISHLER, SIMPSON, ROGERS)

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January 16, 2007, read first time and referred to Committee on Public Health.

January 30, 2007, reported — Do Pass.

February 6, 2007, read second time, ordered engrossed.

February 7, 2007, engrossed.

February 8, 2007, read third time, passed. Yeas 86, nays 0.

#### SENATE ACTION

February 19, 2007, read first time and referred to Committee on Health and Provider Services.

April 5, 2007, amended, reported favorably — Do Pass.

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EH 1349—LS 7432/DI 77+



April 6, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1349

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 25-24-1-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **(a)** The practice of  
3 optometry is ~~hereby~~ defined to be any ~~one of the following acts; or any~~  
4 ~~combination of; or part of~~ the following acts:

5 ~~(a)~~ **(1)** The:

6 **(A)** examination or **optometric** diagnosis of the human eye to  
7 ascertain the presence of abnormal conditions or functions  
8 which may be diagnosed, corrected, remedied or relieved; ~~or~~

9 **(B)** ~~the~~ application or prescription of lenses, prisms, **or**  
10 exercises; or ~~any~~

11 **(C)** physical, mechanical, physiological, or psychological  
12 therapy, or the employment of any means, for the purpose of  
13 detecting any diseased or pathological condition of the eye, or  
14 the effects of any diseased or pathological condition of the eye,  
15 ~~which that~~ may have ~~any~~ significance in a complete  
16 optometric diagnosis of the eye or ~~it's~~ **the eye's** associated  
17 structures.

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(b) (2) The:

(A) application, use, or ~~adaption~~ **adaptation** of physical, anatomical, physiological, psychological, or any other principles, through scientific professional methods and devices, to the examination of the eyes and vision;

(B) measuring ~~their of the eyes and vision~~ function for the purpose of determining the nature and degree of ~~their the eye or vision~~ departure from the normal, if any; and

(C) adopting ~~of~~ optical, physiological and psychological measures ~~and/or the or~~ furnishing or providing ~~of~~ any prosthetic or therapeutic devices for the ~~emendation thereof~~ **improvement of the eyes or vision.**

(b) The term does not include:

(1) surgery (as described in IC 25-22.5-1-1.1), including laser surgery; or

(2) intravitreal injection into the eye.

SECTION 2. IC 25-24-3-6, AS ADDED BY P.L.157-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this chapter, "legend drug" has the meaning set forth in IC 16-18-2-199. **The term includes only the following narcotic drugs:**

(1) **codeine with compounds of aspirin or acetaminophen; and**

(2) **hydrocodone with compounds of aspirin or acetaminophen.**

(b) Subject to subsection (a), the term does not include:

(1) ~~a schedule I controlled substances~~ **substance** (as defined in ~~IC 35-48-1-9~~; **IC 35-48-2-4**);

(2) **a schedule II controlled substance** (as defined in **IC 35-48-2-6**); or

(3) **a schedule III controlled substance not described in subsection (a).**

SECTION 3. IC 25-24-3-10, AS ADDED BY P.L.157-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. The board shall do the following:

(1) Adopt rules under IC 4-22-2 to do the following:

(A) Establish a formulary of legend drugs that may be prescribed, dispensed, or administered by an optometrist.

(B) Set fees described in IC 25-1-8.

(C) Carry out this chapter.

(2) **Except for a drug listed in subdivision (3),** establish education and training requirements in ocular pharmacology required for certification to do the following:

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(A) Administer therapeutic legend drugs.

(B) Dispense legend drugs.

(C) Prescribe legend drugs.

**(3) Establish education and training requirements required for certification to administer, dispense, or prescribe a narcotic drug described in section 6(a) of this chapter.**

~~(3)~~ **(4) Establish continuing education requirements for renewal of the certificate issued under this chapter.**

SECTION 4. IC 25-24-3-12, AS ADDED BY P.L.157-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. **(a) The board shall issue an optometric legend drug certificate to a licensed optometrist who:**

(1) applies; and

(2) successfully fulfills ~~at~~ the requirements of **section 10(2)** of this chapter.

**(b) The board shall issue an optometric controlled substance certificate to a licensed optometrist who:**

**(1) applies; and**

**(2) successfully fulfills the requirements of section 10(3) of this chapter.**

SECTION 5. IC 25-24-3-16, AS ADDED BY P.L.157-2006, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. (a) Optometrists may administer topical diagnostic legend drugs limited to:

(1) miotics;

(2) mydriatics;

(3) anesthetics; and

(4) cycloplegics;

without holding a certificate issued under this chapter. These pharmaceutical agents may be applied in diagnostic procedures only as a part of an examination of the eye.

(b) The board may authorize an optometrist holding a certificate issued under **section 12(a)** of this chapter to:

(1) administer for therapeutic use;

(2) dispense; or

(3) prescribe;

legend drugs that are included in the formulary established by the board under section 10 of this chapter, in the treatment of any condition of the eye or the associated structures of the eye.

**(c) The board may authorize an optometrist holding a certificate issued under section 12(b) of this chapter to:**

**(1) administer for therapeutic use;**

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1           (2) dispense; or  
 2           (3) prescribe;  
 3       **a narcotic drug described in section 6(a) of this chapter that is**  
 4       **included in the formulary established by the board under section**  
 5       **10 of this chapter, in the treatment of any condition of the eye or**  
 6       **the associated structures of the eye.**

7       SECTION 6. IC 25-24-3-17, AS ADDED BY P.L.157-2006,  
 8       SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9       JULY 1, 2007]: Sec. 17. (a) An optometrist may not:

10           (1) administer, dispense, or prescribe therapeutic legend drugs; or  
 11           (2) dispense or prescribe diagnostic legend drugs, **narcotic drugs**  
 12           **described in section 6(a) of this chapter;**  
 13       unless the optometrist is certified under this chapter.

14           **(b) An optometrist may not prescribe or dispense for a patient**  
 15       **more than a forty-eight (48) hour supply, and not more than twelve**  
 16       **(12) doses of a narcotic drug described in section 6(a) of this**  
 17       **chapter for treatment of a single acute:**

18           (1) episode;  
 19           (2) condition; or  
 20           (3) injury.

21       **Before an optometrist may prescribe or dispense for a patient a**  
 22       **drug described in this subsection, the optometrist must examine the**  
 23       **patient. The optometrist may prescribe or dispense a drug**  
 24       **described in this subsection only:**

25           (1) in writing; and  
 26           (2) for treatment of the eye.

27       **If the patient's pain does not improve after forty-eight (48) hours,**  
 28       **the optometrist shall refer the patient to a physician licensed under**  
 29       **IC 25-22.5.**

30       ~~(b)~~ (c) An optometrist may administer diagnostic legend drugs  
 31       without obtaining a certificate under this chapter.

32       ~~(c)~~ (d) An individual who recklessly, knowingly, or intentionally  
 33       violates this chapter commits a Class A misdemeanor.

34       SECTION 7. IC 35-48-2-1 IS AMENDED TO READ AS  
 35       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The board shall  
 36       administer this article and may recommend to the general assembly the  
 37       addition, deletion, or rescheduling of all substances listed in the  
 38       schedules in sections 4, 6, 8, 10, and 12 of this chapter by submitting  
 39       in an electronic format under IC 5-14-6 a report of such  
 40       recommendations to the legislative council. In making a determination  
 41       regarding a substance, the board shall consider the following:

42           (1) The actual or relative potential for abuse.

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- 1 (2) The scientific evidence of its pharmacological effect, if
- 2 known.
- 3 (3) The state of current scientific knowledge regarding the
- 4 substance.
- 5 (4) The history and current pattern of abuse.
- 6 (5) The scope, duration, and significance of abuse.
- 7 (6) The risk to public health.
- 8 (7) The potential of the substance to produce psychic or
- 9 physiological dependence liability.
- 10 (8) Whether the substance is an immediate precursor of a
- 11 substance already controlled under this article.
- 12 (b) After considering the factors enumerated in subsection (a), the
- 13 board shall make findings and recommendations concerning the control
- 14 of the substance if it finds the substance has a potential for abuse.
- 15 (c) If the board finds that a substance is an immediate precursor,
- 16 substances which are precursors of the controlled precursor shall not
- 17 be subject to control solely because they are precursors of the
- 18 controlled precursor.
- 19 (d) If any substance is designated or rescheduled to a more
- 20 restrictive schedule as a controlled substance under federal law and
- 21 notice is given to the board, the board shall recommend similar control
- 22 of the substance under this article in the board's report to the general
- 23 assembly, unless the board objects to inclusion or rescheduling. In that
- 24 case, the board shall publish the reasons for objection and afford all
- 25 interested parties an opportunity to be heard. At the conclusion of the
- 26 hearing, the board shall publish its findings.
- 27 (e) If a substance is rescheduled to a less restrictive schedule or
- 28 deleted as a controlled substance under federal law, the substance is
- 29 rescheduled or deleted under this article. If the board objects to
- 30 inclusion, rescheduling, or deletion of the substance, the board shall
- 31 notify the chairman of the legislative council not more than thirty (30)
- 32 days after the federal law is changed and the substance may not be
- 33 rescheduled or deleted until the conclusion of the next complete
- 34 session of the general assembly. The notice from the board to the
- 35 chairman of the legislative council must be published.
- 36 (f) There is established a ~~sixteen (16)~~ **seventeen (17)** member
- 37 controlled substances advisory committee to serve as a consultative and
- 38 advising body to the board in all matters relating to the classification,
- 39 reclassification, addition to, or deletion from of all substances
- 40 classified as controlled substances in schedules I to IV or substances
- 41 not controlled or yet to come into being. In addition, the advisory
- 42 committee shall conduct hearings and make recommendations to the

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board regarding revocations, suspensions, and restrictions of registrations as provided in IC 35-48-3-4. All hearings shall be conducted in accordance with IC 4-21.5-3. The advisory committee shall be made up of:

(1) two (2) physicians licensed under IC 25-22.5, one (1) to be elected by the medical licensing board of Indiana from among its members and one (1) to be appointed by the governor;

(2) two (2) pharmacists, one (1) to be elected by the state board of pharmacy from among its members and one (1) to be appointed by the governor;

(3) two (2) dentists, one (1) to be elected by the state board of dentistry from among its members and one (1) to be appointed by the governor;

(4) the state toxicologist or the designee of the state toxicologist;

(5) two (2) veterinarians, one (1) to be elected by the state board of veterinary medical examiners from among its members and one (1) to be appointed by the governor;

(6) one (1) podiatrist to be elected by the board of podiatric medicine from among its members;

(7) one (1) advanced practice nurse with authority to prescribe legend drugs as provided by IC 25-23-1-19.5 who is:

(A) elected by the state board of nursing from among the board's members; or

(B) if a board member does not meet the requirements under IC 25-23-1-19.5 at the time of the vacancy on the advisory committee, appointed by the governor;

(8) the superintendent of the state police department or the superintendent's designee;

(9) three (3) members appointed by the governor who have demonstrated expertise concerning controlled substances; ~~and~~

(10) one (1) member appointed by the governor who is a psychiatrist with expertise in child and adolescent psychiatry; **and**

**(11) one (1) optometrist to be elected by the Indiana optometry board from among its members.**

(g) All members of the advisory committee elected by a board shall serve a term of one (1) year and all members of the advisory committee appointed by the governor shall serve a term of four (4) years. Any elected or appointed member of the advisory committee, may be removed for cause by the authority electing or appointing the member. If a vacancy occurs on the advisory committee, the authority electing or appointing the vacating member shall elect or appoint a successor to serve the unexpired term of the vacating member. The board shall

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1 acquire the recommendations of the advisory committee pursuant to  
 2 administration over the controlled substances to be or not to be  
 3 included in schedules I to V, especially in the implementation of  
 4 scheduled substances changes as provided in subsection (d).

5 (h) Authority to control under this section does not extend to  
 6 distilled spirits, wine, or malt beverages, as those terms are defined or  
 7 used in IC 7.1, or to tobacco.

8 (i) The board shall exclude any nonnarcotic substance from a  
 9 schedule if that substance may, under the Federal Food, Drug, and  
 10 Cosmetic Act or state law, be sold over the counter without a  
 11 prescription.

12 SECTION 8. IC 35-48-2-1.5, AS AMENDED BY P.L.1-2006,  
 13 SECTION 546, IS AMENDED TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2007]: Sec. 1.5. (a) The advisory committee  
 15 shall annually elect a chairperson and any other officers that the  
 16 advisory committee determines necessary from among its members.

17 (b) Meetings of the advisory committee may be called by:

18 (1) the advisory committee chairperson; or

19 (2) a majority of the members of the advisory committee.

20 (c) ~~Seven (7)~~ **Nine (9)** members of the **advisory** committee  
 21 constitute a quorum.

22 (d) Notwithstanding IC 1-1-4-1, if at least a quorum of its members  
 23 are present at a meeting, the **advisory** committee may take an action by  
 24 an affirmative vote of ~~at least~~ a majority of the members. ~~present and~~  
 25 ~~voting.~~

26 (e) The advisory committee shall adopt rules under IC 4-22-2 to:

27 (1) set standards related to the registration and control of the  
 28 manufacture, distribution, and dispensing of controlled  
 29 substances, including record keeping requirements;

30 (2) set fees described in IC 25-1-8; and

31 (3) carry out its responsibilities under IC 35-48-2 through  
 32 IC 35-48-3.

33 (f) The Indiana professional licensing agency shall provide staff and  
 34 facilities to the advisory committee under IC 25-1-5.

35 (g) Each member of the **advisory** committee who is not a state  
 36 employee is entitled to the minimum salary per diem provided by  
 37 IC 4-10-11-2.1(b). ~~Such a~~ **The** member is also entitled to  
 38 reimbursement for traveling expenses and other expenses actually  
 39 incurred in connection with the member's duties, as provided in the  
 40 state travel policies and procedures established by the department of  
 41 administration and approved by the budget agency.

42 (h) Each member of the **advisory** committee who is a state

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1 employee is entitled to reimbursement for traveling expenses and other  
2 expenses actually incurred in connection with the member's duties, as  
3 provided in the state travel policies and procedures established by the  
4 department of administration and approved by the budget agency.

5 SECTION 9. IC 25-24-3-11 IS REPEALED [EFFECTIVE JULY 1,  
6 2007].

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BROWN C, Chair

Committee Vote: yeas 8, nays 3.

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 SENATE MOTION

Madam President: I move that Senator Rogers be added as cosponsor of Engrossed House Bill 1349.

MISHLER

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 COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1349, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 25-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **(a)** The practice of optometry is hereby defined to be any ~~one of the following acts, or any combination of, or part of the following acts:~~

~~(a)~~ **(1)** The:

**(A)** examination or **optometric** diagnosis of the human eye to ascertain the presence of abnormal conditions or functions which may be diagnosed, corrected, remedied or relieved; ~~or~~

**(B)** ~~the~~ application or prescription of lenses, prisms, **or** exercises; ~~or any~~

**(C)** physical, mechanical, physiological, or psychological therapy, or the employment of any means, for the purpose of detecting any diseased or pathological condition of the eye, or the effects of any diseased or pathological condition of the eye,

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~~which~~ **that** may have ~~any~~ significance in a complete optometric diagnosis of the eye or ~~its~~ **the eye's** associated structures.

~~(b)~~ **(2)** The:

**(A)** application, use, or ~~adaption~~ **adaptation** of physical, anatomical, physiological, psychological, or any other principles, through scientific professional methods and devices, to the examination of the eyes and vision;

**(B)** measuring ~~their~~ **of the eyes and vision** function for the purpose of determining the nature and degree of ~~their~~ **the eye or vision** departure from the normal, if any; and

**(C)** adopting **of** optical, physiological and psychological measures ~~and/or the or~~ or furnishing or providing **of** any prosthetic or therapeutic devices for the ~~emendation thereof~~ **improvement of the eyes or vision.**

**(b) The term does not include:**

**(1) surgery (as described in IC 25-22.5-1-1.1), including laser surgery; or**

**(2) intravitreal injection into the eye."**

Page 1, line 4, delete "a" and insert **"only the following"**.

Page 1, line 5, delete "drug listed under IC 35-48-2-8(e)," and insert **"drugs:**

**(1)".**

Page 1, line 5, delete "compounds," and insert **"compounds of aspirin or acetaminophen;"**.

Page 1, line 6, delete "hydrocodone", begin a new line block indented and insert:

**"(2) hydrocodone".**

Page 1, line 6, delete "." and insert **"of aspirin or acetaminophen."**

Page 1, line 12, delete "listed in" and insert **"not described in subsection (a)."**

Page 1, delete lines 13 through 14.

Page 2, line 14, delete "listed in IC 35-48-2-8(e), codeine with" and insert **"described in section 6(a) of this chapter."**

Page 2, delete line 15.

Page 3, delete line 12.

Page 3, line 13, delete "narcotic drugs listed under IC 35-48-2-8(e) that are" and insert **"a narcotic drug described in section 6(a) of this chapter that is"**.

Page 3, line 21, after "narcotic drugs" insert **"described in section 6(a) of this chapter;"**.

Page 3, delete lines 22 through 23.

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Page 3, line 26, delete "five (5) day supply of:" and insert **"forty-eight (48) hour supply, and not more than twelve (12) doses of a narcotic drug described in section 6(a) of this chapter for treatment of a single acute:**

- (1) episode;**
- (2) condition; or**
- (3) injury."**

Page 3, delete lines 27 through 29, begin a new line blocked left and insert:

**"Before an optometrist may prescribe or dispense for a patient a drug described in this subsection, the optometrist must examine the patient. The optometrist may prescribe or dispense a drug described in this subsection only:**

- (1) in writing; and**
- (2) for treatment of the eye.**

**If the patient's pain does not improve after forty-eight (48) hours, the optometrist shall refer the patient to a physician licensed under IC 25-22.5."**

Page 6, line 24, strike "at least".

Page 6, line 24, after "members" insert ".".

Page 6, line 24, strike "present and".

Page 6, line 25, strike "voting."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1349 as printed January 31, 2007.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 1.

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**Y**

